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2
3 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
4 **OF THE STATE OF WASHINGTON**

5 In the Matter of Enforcement Action Against:

PDC CASE NO. 12-167

6 Brad Owen, Citizens to Re-Elect Brad Owen
7 Lieutenant Governor, and Brad Owen Surplus
8 Funds Account,

FINAL ORDER

Respondents

9
10 This matter came before the Washington State Public Disclosure Commission on
11 September 27, 2012 at the PDC Office, 711 Capitol Way, Room 206, Olympia,
12 Washington. Those present included Jennifer Joly, Commission Chair; Jim Clements,
13 Member; Amit Ranade, Member; and Grant Degginger, Member. Participating were: Brad
14 Owen on behalf of Respondents; Linda Dalton, Senior Assistant Attorney General on
15 behalf of PDC staff; PDC Executive Director Andrea McNamara Doyle; Nancy Krier,
16 General Counsel for the Commission; and PDC staff member Jana Greer as
17 recorder/reporter of the proceeding. The proceeding was open to the public and was
18 recorded.
19

20 The Respondent Brad Owen is the Washington State Lieutenant Governor. He is a
21 candidate for re-election in the November 2012 election. The Respondent Citizens to Re-
22 Elect Brad Owen is a political committee established for Mr. Owen's candidacy for re-
23 election in 2012. The Respondent Brad Owen Surplus Funds Account is an account
24 established by Mr. Owen containing excess campaign funds from Mr. Owen's 2008 re-
25 election campaign. This matter resulted from a complaint alleging that Respondents
26

1 violated RCW 42.17 between 2009 and 2012 by failing to timely file C-3 and C-4
2 disclosure reports.

3 PDC Staff submitted to the Commission a cover memo from Mr. Stutzman dated
4 September 20, 2012, with a Notice of Administrative Charges dated September 7, 2012 and
5 a Report of Investigation dated September 7, 2012 (with exhibits).
6

7 The parties jointly submitted a proposed Stipulation as to Facts and Violations
8 (Stipulation) dated September 26, 2012. The Stipulation was provided to the Commission
9 with a cover memo from Mr. Stutzman dated September 26, 2012 and with a summary of
10 comparable cases.

11 The parties made oral presentations. The parties requested the Commission to
12 accept the Stipulation. The Commission voted 4-0 to accept the Stipulation.
13

14 The parties argued as to what penalty, if any, the Commission should impose. The
15 Commission voted 4-0 to assess a \$1,000 penalty, with the condition provided in this Order.

16 In assessing a penalty, the Commission weighed several factors. The factors
17 included comparable penalties assessed in other enforcement cases; good faith efforts of the
18 Respondents to comply with RCW 42.17; no prior history of violations by Respondents
19 during Respondent Owen's years of public service; Respondents' technical difficulties in
20 filing; subsequent remedial measures taken by Respondents; Respondent Owen's
21 familiarity with the law concerning another account discussed in this case (legislative
22 international account); and, Respondents' failure to review their reports on the PDC
23 website, requiring the filing of a complaint in order to reveal that reports had not been filed.
24

25 ///

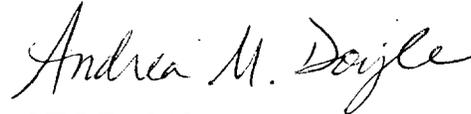
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1 The Executive Director is authorized to enter this order on behalf of the
2 Commission.

3 So ORDERED this 10th day of October, 2012.

4 WASHINGTON STATE PUBLIC
5 DISCLOSURE COMMISSION

6 FOR THE COMMISSION:

7 

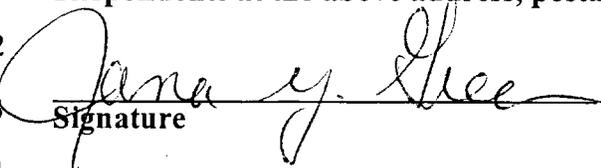
8 ANDREA MCNAMARA DOYLE
9 Executive Director

10
11 **ATTACHMENTS:** (1) Stipulation as to Facts, and Violations (dated September 26, 2012)
12 (2) Appeals and Enforcement of Final Orders

13
14
15 *Copy of this Final Order to:*

16 Brad Owen
17 PO Box 1426
18 Shelton, WA 98584

19
20
21 I, Jana Y. Greer, certify that I mailed a copy of this order to the
22 Respondents at the above address, postage prepaid, on the date stated herein.

23 
24 Signature

25 10/10/12
26 Date

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8 In the Matter of Enforcement Action
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9 Brad Owen, Citizens to Re-elect Brad
10 Owen Lieutenant Governor, and Brad
Owen Surplus Funds Account,

STIPULATION AS TO FACTS AND
VIOLATIONS

11 Respondents.

12 The parties hereto, the Public Disclosure Commission Staff, through its Executive
13 Director, Andrea McNamara Doyle, and Respondents, Brad Owen, Citizens to Re-elect Brad
14 Owen Lieutenant Governor, and Brad Owen Surplus Funds Account, submit this Stipulation
15 as to Facts, Violations, ~~and Penalty~~ *and PDC. And* in this matter.

16 **I. JURISDICTION**

17 The Public Disclosure Commission has jurisdiction over this proceeding pursuant to
18 RCW 42.17A, the Public Disclosure Act; RCW 34.05, the Administrative Procedure Act; and
19 WAC 390.

20 **II. FACTS**

- 21 1. Respondent Brad Owen is currently the duly elected Lieutenant Governor for the State of
22 Washington. He is running for re-election as Lieutenant Governor and is on the ballot for
23 the November 2012 General Election.
- 24 2. On December 10, 2009, Respondent Owen filed a Candidate Registration (Form C-1) with
25 the Public Disclosure Commission (PDC) declaring his candidacy for re-election in 2012.
26 His re-election committee is Respondent Citizens to Re-elect Brad Owen Lieutenant

1 Governor. Respondent Owen selected the Full Reporting option for this political
2 committee, which requires frequent, detailed reports of contribution and expenditure
3 activities.

4 3. At the end of December 2008, Respondent Owen deposited surplus funds remaining from
5 his 2008 re-election campaign into an account called the "Lt. Governor's Office Fund",
6 which is now named Respondent Brad Owen Surplus Funds Account.

7 4. Since the filing of the complaint related to these matters, Respondents have engaged a
8 company to process the filing of campaign finance disclosure reports.

9 **Reporting Contributions and Expenditures (RCW 42.17.080 and .090)**

10 5. Under RCW 42.17.080 (the statute applicable to the relevant reporting obligations),
11 Respondents Owen and Citizens to Re-elect Brad Owen Lieutenant Governor were
12 required to file Campaign Summary Contribution and Expenditure reports (C-4) and
13 Monetary Contribution reports (C-3) at regular intervals.

14 6. September 2011 C-3 Report: The C-3 report covering contribution activity for September
15 2011 for Respondents Owen and Citizens to Re-elect Brad Owen Lieutenant Governor was
16 due by October 10, 2011. Respondent Citizens to Re-elect Brad Owen Lieutenant
17 Governor's campaign treasurer believes that the C-3 report due on October 10, 2011 was
18 timely filed by the campaign but could not locate or provide a confirmation number for that
19 filing. A PDC staff search could not locate any report or record of such filing with the
20 PDC. In an email from the campaign treasurer to PDC staff dated October 10, 2011 the
21 campaign treasurer indicated that she had received a confirmation report but not a check
22 mark on the C-3 report. PDC staff told the campaign treasurer as long as she had a
23 confirmation, that she could be certain that the report was filed.

24 7. At the time the complaint was filed in this case, no record of this C-3 report was located in
25 the PDC database. The report filed on May 1, 2012 disclosed \$975 in contributions
26 received and deposited on September 21, 2011.

1 8. November 2011 C-3 Report: The C-3 report disclosing contributions received in early
2 November 2011 for Respondents Owen and Citizens to Re-elect Brad Owen was due on
3 November 10, 2011. From November 10, 2011 through November 21, 2011, PDC staff
4 and the campaign treasurer worked diligently to address the filing and computer difficulties
5 being experienced by Respondent Citizens to Re-elect Brad Owen that was impeding the
6 submission of the campaign's November 2011 reports. Ultimately, the campaign treasurer
7 believed that the C-3 report had been filed. The report filed on May 1, 2012 disclosed
8 \$27,195 in contributions received and deposited on November 8, 2011.

9 9. November 2011 C-4 Report: The C-4 report for contribution and expenditure activity in
10 November 2011 was due from Respondents Owen and Citizens to Re-elect Brad Owen on
11 December 10, 2011. Respondent Citizens to Re-elect Brad Owen's campaign treasurer
12 prepared the C-4 on or about November 30, 2011 and believed that she submitted it at that
13 time. Respondents Owen and Citizens to Re-elect Brad Owen could not locate or provide a
14 confirmation number for that filing. A PDC staff search could not locate any report or
15 record of such filing with the PDC.

16 10. This C-4 report filed on May 1, 2012 disclosed \$46,596 in monetary contributions, \$300 in
17 in-kind contributions, and \$16,625 in monetary expenditures for November 2011. The
18 expenditures included paying for consulting services, setting up a campaign website, and
19 other political advertising materials.

20 11. A session freeze went into effect on November 28, 2011 at the commencement of a
21 legislative special session during which time Respondents Owen and Citizens to Re-elect
22 Brad Owen could not raise funds for the re-election campaign and during which campaign
23 reports would not be due.

24 **Surplus Funds Account**

25 12. Under RCW 42.17.090, Respondents Owen and Brad Owen Surplus Funds Account were
26 required to file C-3 and C-4 reports detailing transfers of surplus funds remaining from re-

1 election campaign accounts to surplus funds accounts established pursuant to RCW
2 42.17.095.

3 13. Respondents Owen and Brad Owen Surplus Funds Account failed to file any C-3 or C-4
4 reports detailing the disposal of surplus funds remaining from Respondent Owen's 2008 re-
5 election campaign from January 2009 to February 2012 for receipts and expenditures,
6 which totaled \$22,850.

7 14. The following chronology details actions and communications between representatives of
8 Respondents Brad Owen, Brad Owen Surplus Funds Account, and previous Brad Owen
9 election campaigns, and the PDC related to the campaigns' post-election accounting and
10 reporting responsibilities:

11 a. 3/29/1999: Letter from Respondent Owen to PDC requesting clarification of a "public
12 office fund" as identified in RCW 42.17.710, which related to the session freeze period.

13 b. 4/5/1999: Letter to Respondent Owen from then PDC Director Warheit answering the
14 3/29/1999 letter and saying that "the only limitation under RCW Chapter 42.17 on
15 soliciting donations to a public office fund appears to be the freeze period of section
16 .710." The letter further discusses the establishment of a surplus funds account, what
17 the fund can be used for, and attached instructions from the state Executive and
18 Legislative Candidates manual for more detail on a surplus funds account, including
19 reporting obligations.

20 c. 3/1/2001: Memo from 2000 Brad Owen for Lt. Governor committee treasurer Linda
21 Mitchell: "We are also in the process of starting a surplus funds account and I have to
22 file the final C-4 for the 2000 campaign and the startup C-1 and C-4 for the surplus
23 funds account."

24 d. 5/1/2002: Memo from Citizens to Re-Elect Brad Owen Treasurer Linda Mitchell: "I
25 will submit new reports under a new filer identification number for January 1, 2001
26

1 through April 30, 2002, which will be for the Surplus Funds Account for the Office of
2 Lt. Governor Brad Owen.”

3 e. 5/1/2002: Committee Registration form (C-1) filed by Respondent Owen registering
4 Respondent Brad Owen Surplus Funds Account, identifying Linda Mitchell as the
5 treasurer.

6 f. 4/4/2003: Respondent Brad Owen Surplus Funds Account files C-1 report identifying
7 Ron Schnell as the treasurer.

8 g. 7/17/2003: Respondent Brad Owen Surplus Funds Account files C-4 report for
9 October 1, 2002 through January 31, 2003.

10 h. 12/9/2004: 2004 Owen re-election campaign committee files C-4 disclosing transfer of
11 surplus funds on November 26, 2004 to “Lt. Governor Brad Owen Office account.”

12 i. 12/27/2005: Voice message with Respondent Owen to Perkins asking whether surplus
13 funds could be transferred to a bona fide party committee once they had been moved to
14 a surplus funds account.

15 j. 12/29/2005: Perkins phone call to Respondent Owen advising that contributions could
16 be made from either the surplus funds remaining in a campaign account or surplus
17 funds in a separate public office expense account. Only restriction is that public office
18 expenses could not be made from the surplus funds in an active campaign account.

19 k. 1/9/2006: Email between Anderson and Owen campaign staff regarding Brad Owen
20 account: “His campaign donated remaining funds to the Lt. Governor office fund
21 which pays for gifts to dignitaries that come to his office and when they visit overseas. .
22 . . . When I reported that all the funds were distributed and asked you if there was
23 anything further to report and if the Lt. Governors office had to report what they spent
24 and you stated that there was nothing more required. Recently Brad was reading over
25 the, I believe it is called ‘surplus funds’ in the rules and regulations and he felt his
26 office should be reporting the expenditures. I told him I would go back to you and

1 make sure what I had received from you stated there was no further accounting. I'm
2 afraid I may not have been clear enough because I meant the funds after they are in the
3 Lt. Governors office." Response from Anderson: "The surplus money that Brad
4 transfers from his campaign account to the state gets reported as a monetary
5 expenditure and then you're done with the PDC."

6 l. 1/20/2006: Email between Anderson and campaign staff regarding campaign fund
7 transfers to "Lt. Gov. Office Fund". "I gave Brad your message that there was no
8 further accounting for the funds donated from his campaign to the Lt. Gov. Office
9 Fund, as far as PDC was concerned. Did I misunderstand what you said, that there may
10 be other places he must account for those funds? Brad checked and could find no other
11 place to report to but the PDC, so if PDC doesn't need to keep an accounting then
12 whatever he does with the funds are up to his office to just keep an inter office report.
13 Does this sound right? Sorry we are such worry warts." Response from Anderson:
14 Are we talking about the legislative international account? I don't know what, if any
15 accountability there is for that account. Why don't you check with the State Auditor?"

16 m. 12/19/2008: Email between Hansen and campaign staff: "Jennifer, I cannot find the
17 'candidate manual' to close out Brads account, can you help me? I know I got to the
18 Final Report in the C4 but I'm not sure how to pay out the remaining amount to the Lt.
19 Gov. fund for visiting dignitaries and gifts, etc." Hansen response: "I am not sure
20 which account you are referring to. These expenses don't sound like they are campaign
21 related. Are you referring to a surplus account? If so, nothing has been filed for the
22 surplus recently."

23 n. 12/30/2008: 2008 Owen re-election campaign committee files C-4 disclosing transfer
24 of surplus funds to "Lt. Governor Office Fund", which appears to be the same as
25 Respondent Brad Owen Surplus Funds Account.
26

1 o. 5/8/2012: Email from Hansen to campaign treasurer: "Second, please review the
2 records for the expenditure made in December 2008 regarding the Lt. Governor fund
3 for visiting dignitaries and gifts. There is a notation on the 2008 campaign account's
4 final C-4/Schedule A report describing this expense. I am requesting some details
5 regarding how those funds were spent after they were transferred. I believe the details
6 should have been disclosed through the surplus funds account. If you can help fill in
7 the details, for me, you and I can work on reporting them through the surplus account."

8 p. 6/4/2012: Letter from Respondent Owen stating that in 2003, the surplus funds account
9 was closed and that he understood that no further reports were necessary. Additionally,
10 in December 2008, new surplus funds account established.

11 q. 6/4/2012: Respondents Owen and Brad Owen Surplus Funds Account filed C-3s and
12 C-4s for the period of 12/15/2008 through 1/31/2012.

13 r. 7/15/2012: Letter from Respondent Owen stating that the surplus funds account was
14 closed shortly after the 2004 election and remained that way until the account was
15 opened in 2008.

16 15. It is acknowledged that Respondents Brad Owen and Brad Owen Surplus Funds Account
17 made good faith efforts to clarify and comply with their reporting responsibilities for post-
18 election accounting and reporting responsibilities.

19 16. All reporting obligations for the disposal of surplus funds from the 2008 re-election
20 campaign have been completed.

21 III. LEGAL AUTHORITY

22 **RCW 42.17.080 and 090¹** require candidates to file timely, accurate reports of contributions
23 and expenditures, including in-kind contributions. Under the full reporting option, until five
24

25 ¹ Effective January 1, 2012, RCW 42.17.080 and RCW 42.17.090 were re-codified as RCW 42.17A.235
26 and RCW 42.17A.240, and RCW 42.17.095 was re-codified as RCW 42.17A.430. However, because the
behavior that forms the basis for this Stipulation occurred prior to January 1, 2012, the former statutes apply to
this proceeding.

1 months before the general election, C-4 reports are required monthly when contributions or
2 expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days
3 before each election, and in the month following the election, regardless of the level of activity.
4 Contribution deposits made during this same time period must be disclosed on the Monday
5 following the date of deposit.

6 **RCW 42.17.095** addresses the manner in which surplus funds from a campaign may be
7 disposed of and determines that when disposed of in these manners do not constitute
8 contributions. This statute allows a candidate to create a separate account "for unreimbursed
9 public office-related expenses" and requires reporting of "any such disposition in accordance
10 with RCW 42.17.090."

11 IV. VIOLATIONS

12 Based on the Stipulation of Facts set forth above, Respondents Brad Owen, Citizens to
13 Re-elect Brad Owen Lieutenant Governor, and Brad Owen Surplus Funds Account, stipulate
14 that unintentional violations of the report filing requirements of RCW 42.17 were committed
15 despite Respondents Brad Owen, Citizens to Re-elect Brad Owen Lieutenant Governor, and
16 Brad Owen Surplus Funds Account good faith attempts to file such reports and determine their
17 filing requirements.

18
19 Andrea M. Doyle
Andrea McNamara Doyle, Executive Director
20 Public Disclosure Commission

9/26/12
Date Signed

21 Brad Owen
22 Brad Owen, on behalf of all Respondents

9/26/12
Date Signed

INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

APPEALS

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 --.574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.